REMARKS

After entry of the above amendments, claims 34-54 will be pending in the present application. Claims 1-33 have been cancelled. New claims 34-54 have been added. Support for the new claims can be found in the specification, drawings, and claims as originally filed. No new matter has been added.

In this Amendment, Applicant has cancelled previously pending claims 1-33 from further consideration in this application. Applicant is not conceding that the subject matter encompassed by claims 1-33 is not patentable over art cited by the Examiner. Claims 1-33 have been cancelled in this Amendment solely to facilitate expeditious prosecution of the present application. Applicant reserves the right to pursue claims directed to the subject matter encompassed by claims 1-33 and any additional claims in one or more continuing and/or divisional applications.

Claim Objections

Previously pending claims 1-33 were objected to on the basis of informalities. Since claims 1-33 have been cancelled and none of the newly added claims recite the informalities noted by the Examiner, Applicant respectfully requests withdrawal of the claim objections.

§ 101 Rejections

Previously pending claims 27-28 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Since claims 27-28 have been cancelled and none of the newly added claims recite language noted by the Examiner, Applicant respectfully requests withdrawal of the claim rejections under § 101.

Double Patenting

Previously pending claims 1-33 were provisionally rejected under 35 U.S.C. § 101 as claiming the same invention as that of claims 1-33 of co-pending U.S. Patent Application No. 10/762,916. Applicant has cancelled claims 1-33 from the present application and claims 1-33 from co-pending U.S. Patent Application No. 10/762,916. Applicant respectfully submits that the newly added claims in the present application and the newly added claims in co-pending U.S. Patent Application No. 10/762,916 are patentably distinct as the newly added claims in the present application recite elements not found in the newly added claims of co-pending U.S. Patent Application No. 10/762,916, and vice versa. Therefore, withdrawal of the provisional double patenting rejection is respectfully requested.

§ 103 Rejections

Previously pending claims 1, 6-9, 11, 27, 29, and 31-32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,051,098 to Masters et al. (hereinafter "Masters"), in view of U.S. Patent No. 6,597,956 to Aziz et al. (hereinafter "Aziz"). Previously pending claims 2-5 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Masters, in view of Aziz, and further in view of U.S. Patent No. 5,841,869 to Merkling et al. (hereinafter "Merkling"). Previously pending claims 10, 12-14, and 33 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Masters, in view of Aziz, and further in view of U.S. Patent Application Publication No. 2003/0208523 to Gopalan et al. (hereinafter "Gopalan"). Previously pending claims 15-26, 28, and 30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Masters, in view of Aziz, and further in view of U.S. Patent Application Publication No. 2006/0056607 to Halkosaari (hereinafter "Halkosaari").

New claim 34 recites:

> 34. A method for supporting application workloads across multiple domains, the method comprising:
>
> receiving a request from a client to execute a first application workload on a first server cluster at a first domain, the first server cluster at the first domain including a plurality of server nodes;
>
> identifying a service level agreement negotiated with the client for the first application workload, the service level agreement specifying performance requirements for execution of the first application workload on the first server cluster at the first domain;
>
> assigning a subset of the plurality of server nodes in the first server cluster at the first domain to execute the first application workload;
>
> monitoring execution of the first application workload on the subset of server nodes assigned to execute the first application workload to determine whether the performance requirements for execution of the first application workload specified in the service level agreement are being met; and
>
> responsive to a determination that the performance requirements for execution of the first application workload are not being met, sending a request to a second domain to assign one or more of a plurality of server nodes in a second server cluster at the second domain to the execution of the first application workload,
>
> wherein a second application workload is executing on the second server cluster at the second domain while the first application workload is executing on the first server cluster at the first domain, and
>
> wherein the request sent to the second domain specifies a number of server nodes requested, a duration in which the number of server nodes requested will be needed, and a dollar value associated with the request.

Neither Masters nor Aziz discloses, teaches, or suggests "responsive to a determination that the performance requirements for execution of the first application workload are not being met, sending a request to a second domain to assign one or more of a plurality of server nodes in a second server cluster at the second domain to the execution of the first application workload", as recited in claim 34.

Specifically, in both Masters and Aziz, allocation of resources is centralized. Masters states:

> [T]he Resource Manager 60 is the primary decision-making component of the Resource Management Architecture. The Resource Manager 60 is responsible for determining:
>
> how to respond to host and application failures;
>
> where (i.e., which of hosts A-N) to place new applications;
>
> which applications to start up in response to the detection of a new host (host N+1);
>
> how to resolve application dependencies;

> what applications should be started, stopped, or moved in response to application system priority changes; and
>
> based on recommendations from the QoS Managers, when and where scalable application should be started or stopped.

(Col. 6, lns. 49-63 of Masters). Thus, in Masters, there would be no need for one host to send a request for resources to another host when the quality of service required for an application executing on the one host is being violated as the "Resource Manager" will make the appropriate adjustments between hosts.

Aziz states:

> Initially, all storage devices and computing elements are assigned to Idle Pools. Under program control, the supervisory mechanism dynamically configures the VLAN switches and SAN switches to couple their ports to one or more computing elements and storage devices. As a result, such elements and devices are logically removed from the Idle Pools and become part of one or more virtual server farms (VSFs) or instant data centers (IDCs). Each VSF computing element is pointed to or otherwise associated with a storage device that contains a boot image usable by the computing element for bootstrap operation and production execution.

(Col. 3, lns. 35-46 of Aziz). Hence, the "supervisory mechanism" in Aziz decides which computing elements and storage devices to add to each "virtual server farm". In other words, one "virtual server farm" would not be sending a request to another "virtual server farm" for assignment of computing elements or storage devices.

Further, claim 34 recites "a second application workload is executing on the second server cluster at the second domain while the first application workload is executing on the first server cluster at the first domain". Consequently, the "Idle Pool" in Aziz cannot be construed as disclosing, teaching, or suggesting the "second server cluster" recited in claim 34 because the "Idle Pool" is not used for execution of applications and only includes computing elements and storage device not in use.

Therefore, neither Masters nor Aziz discloses, teaches, or suggests "responsive to a determination that the performance requirements for execution of the first application workload are

not being met, sending a request to a second domain to assign one or more of a plurality of server nodes in a second server cluster at the second domain to the execution of the first application workload, wherein a second application workload is executing on the second server cluster at the second domain while the first application workload is executing on the first server cluster at the first domain", as recited in claim 34.

In the Office action, the Examiner states:

> Halkosaari teaches a method of cost sharing negotiations as follows:
> a subscriber initiates a service involving one or more other subscribers may propose the cost for the service be shared by all of the participants (see, e.g., page 2, paragraph [0032], lines 1-4);
> SIP INVITE message containing a cost sharing request to ask for approval or rejection of the proposal (see, e.g., page 3, paragraph [0033], lines 1-8);
> acceptance, rejection or counter proposal are returned by the terminating user equipment to the originating user equipment (see, e.g., page 3, paragraph [0034]);
> the originating user equipment then notify the user equipments which have agreed to share the total cost (see, e.g., page 3, paragraph [0035], lines 1-4); and
> final confirmation of the cost sharing plan by the terminating equipments is provided by the return of a SIP OK message to the originating equipment (see, e.g., page 3, paragraph [0035], lines 6-12).

(November 1, 2007 Office action, pg. 12).

The request in Halkosaari, however, is sent from one participant of a service to another participant of the service to share the costs for the service. Therefore, the "request" in Halkosaari cannot be construed as disclosing, teaching, or suggesting "a request . . . to assign one or more of a plurality of server nodes in a second server cluster at the second domain to the execution of the first application workload", as recited in claim 34, because the "request" in Halkosarri is not a request for resources or services.

Merkling and Gopalan do not cure the deficiencies of Masters, Aziz, and Halkosarri. Thus, even if Merkling and Gopalan were combined with Masters, Aziz, and Halkosarri, the combination would neither teach nor suggest all of the elements of claim 34.

Based at least on the above, Applicant respectfully submits that claim 34, and the claims that depend therefrom, are patentable over Masters, in view of Aziz, and further in view of Merkling, Gopalan, and Halkosarri.

CONCLUSION

On the basis of the above remarks, reconsideration and allowance of the claims is believed to be warranted and such action is respectfully requested. If the Examiner has any questions or comments, the Examiner is respectfully requested to contact the undersigned at the number listed below.

Respectfully submitted,
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